

**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2002-057**

XXXXXX, XXXXXX X.  
XXX XX XXXX, XXX

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**FINAL DECISION**

**██████████ Attorney-Advisor:**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on February 28, 2002, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated December 31, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant asked the Board to order the Coast Guard to pay him severance pay for the time he served as a commissioned officer. The applicant stated that a "JNC" (unacceptable conduct) separation code was applied to his discharge form (DD Form 214) when he was honorably discharged, involuntarily. He alleged that under the Personnel Manual, the JNC separation code does not apply to an officer whose honorable discharge is involuntary and thus, he is entitled to severance pay. He alleged that the Personnel Manual contains no "legal reason for [his] non-entitlement."

**SUMMARY OF THE APPLICANT'S RECORD**

On May 21, 19XX, the applicant graduated from XXXX XXXX and was commissioned on the same date as an ensign in the regular component of the Coast Guard. On November 21, 19XX, he was promoted to lieutenant junior grade (LTJG), grade O-2.

On June 17, 19XX, the applicant was given non-judicial punishment (NJP) for engaging in two romantic, inappropriate relationships with junior enlisted females; engaging in adultery and fraternization with the two females; and making a false official statement to investigators. The foregoing constituted violations of Articles 92, 107, and 134 of the Uniform Code of Military Justice (UCMJ). As punishment for these violations, he received a punitive letter of reprimand and forfeiture of \$1,000.00 per month for two months.

As a result of the NJP, on June 22, 19XX, the applicant's supervisor prepared a special officer evaluation report (OER), recommending that the applicant "be separated for cause [in accordance with] Article 12.A.15., or, if more appropriate, [by] revoking his commission under Article 12.A.11." Personnel Manual, Article 12.A.11.b.1. In August 19XX, the special OER was approved by the applicant's executive officer (XO), who served as the reporting officer, and his commanding officer (CO), who served as the reviewer. In accordance with Article 12.A.11.b.2. of the Personnel Manual, the applicant was granted an opportunity to review the special OER and to comment by letter endorsement. On December 1, 19XX, he commented on the special OER, stating, in pertinent part, that "I request to be afforded the opportunity to finish my military obligation or if it is decided that I do not deserve a second chance that my commission be revoked under Article 12.A.11."

On January 21, 19XX, the Commander of Coast Guard Personnel Command (CGPC) initiated action to convene a board to recommend whether the applicant's commission should be revoked. Personnel Manual, Article 12.A.11.b.1. On February 29, 20XX, a Revocation panel convened and recommended that the applicant's commission be revoked. Personnel Manual, Article 12.A.11.b.3. The Commandant approved the Panel's recommendation on March 17, 19XX, and the applicant was notified of the same by letter dated March 22, 19XX. On March 23, 19XX, the applicant was provided detachment orders, wherein it was stated that "[s]everance pay is not authorized." Under the Separation Designator Program (SPD) Handbook, the separation code of JNC, along with the separation authority of COMDTINST M1000.6A, Article 12.A.15. for commissioned officers, were applied to his discharge form DD 214.

The applicant's last day on active duty was May 17, 19XX, the effective date of his discharge.

### **VIEWS OF THE COAST GUARD**

On August 16, 2001, the Chief Counsel submitted the Coast Guard's comments to the Board. He adopted the analysis and conclusions of an attached memorandum prepared by CGPC, and recommended that the applicant's request for relief be denied.

The Chief Counsel stated that, pursuant to 14 U.S.C. § 281, during the first three years of commissioned service, regular Coast Guard officers are considered to be in probationary status. He argued that the applicant is not entitled to severance pay because at the time of his separation for unacceptable conduct, the applicant had fewer than three years of commissioned service and was considered to be in a probationary status. He asserted that 10 U.S.C. § 630, the Department of Defense (DOD) companion statute for 14 U.S.C. § 281, specifically excludes compensation for officers whose commissions are revoked while in probationary status. The Chief Counsel argued that the absence of authority for severance pay under 14 U.S.C. § 281 means that no legal authority exists to pay probationary status officers whose commissions are revoked.

The Chief Counsel argued that, conversely, officers separated under the “show cause” process pursuant to 14 U.S.C. §§ 321, 322, and 323 are entitled to severance pay. He contended that the “show cause” process, however, is reserved for officers who are beyond probation, having more than three years of commissioned service. He argued that officers with fewer than three years of commissioned service are not entitled to be processed under the show cause provisions.

The Chief Counsel stated that the Separation Program Designator (SPD) Handbook establishes the DOD separation codes that must be included in block 26 on a member’s discharge form DD 214. He argued that the SPD code assigned to an officer upon separation has no bearing on entitlement to severance pay. He contended that the SPD code assigned to a member best describes the reason for separation. He stated that the JNC code, which indicates that an officer was separated for unacceptable conduct, was appropriately applied to the applicant’s discharge certificate.

#### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On August 19, 2002, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 15 days. On September 3, 2002, he responded to the Board.

The applicant stated that he generally objected to the Coast Guard’s advisory opinion. He asserted that the Coast Guard is required to strictly adhere to the Personnel Manual, as it is written. He argued that the Coast Guard should not arbitrarily assign SPD codes on a case-by-case basis. He argued that an officer whose commission is revoked must be discharged under certain SPD codes, and the code of JNC fails to be an appropriate code under the Personnel Manual. As such, the applicant contended that his “commission was not revoked under any legal pretense.” The applicant further contended that the length of his commission was not germane to the issues of his case.

The applicant argued that there are no provisions in the Personnel Manual that preclude him from receiving severance pay. He asserted that the SPD code he was discharged under was not applicable to officers who are honorably and involuntarily discharged. He urged the Board to find that the Coast Guard must support his transition into the private sector.

#### APPLICABLE LAW

The SPD Handbook states that the JNC separation code is to be assigned when the member's "[i]nvoluntary discharge [is] directed by established directive (no board entitlement) when [the] member performs acts of unacceptable conduct (i.e., moral and/or professional dereliction) not otherwise listed." The JNC separation code is applied to commissioned officers under the authority of Article 12.A.15. of the Personnel Manual. Moreover, the handbook requires an RE-4 reenlistment code to be assigned when the JNC separation code is used.

#### *Personnel Manual (COMDTINST M1000.6A)*

Article 12.A.11.a.1., titled "Revoking Regular Officers' Commissions in Their First Three Years of Service", "General," provides that "[t]he Service considers [the] first three years of an officer's career a probationary period during which he or she demonstrates ability to adapt to the requirements of Coast Guard life and show capability for future development. ..." Under Article 12.A.11.b.1., an officer's CO may recommend to CGPC that an officer within three years of commissioning have his commission revoked. Article 12.A.11.b.2. provides that the officer must have an opportunity to submit a statement to a panel of senior officers, who review the record and make recommendation about revocation. Article 12.A.11.b.4 provides that the Commandant may approve or disapprove a recommendation for revocation, pursuant to 14 U.S.C. § 281. Article 12.A.11.c., titled "Separation," states that "[o]fficers whose commissions are revoked under this Article shall be honorably discharged ...."

Article 12.A.15. provides alternate authority, under 14 U.S.C. §§ 321-327, for revoking an officer's commission "for cause." Different procedures are followed and officers are entitled to a hearing. Article 12.A.15.c.4. states that "[o]fficers with less than three years of commissioned will normally be processed under Article 12.A.9. [Discharging Active Duty Reserve Officers] or 12.A.11. depending upon their status."

Article 12.A.19.c., titled "Separated for Cause," provides that "[a] regular Coast Guard officer separated for cause under article 12.A.15.c.1. and not eligible for retirement is entitled to severance pay. ..." pursuant to the authority contained in 14 U.S.C. §§ 321-327.

*Coast Guard Pay Manual (COMDTINST 7220.29)*

Article 10 of the Pay Manual governs members' entitlement to severance pay. Article 10.F.1.a. states that "[a] regular commissioned officer who is discharged from the Coast Guard may be paid [severance pay] under the provisions of 14 U.S.C. 286 or [14 U.S.C.] 327 ...." (Title 14 U.S.C. § 286 authorizes severance pay for officers who are discharged or retired because they have twice failed to be selected for promotion.)

**FINDINGS AND CONCLUSIONS**

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.31, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. Pursuant to 14 U.S.C. § 281, Article 12.A.11. of the Personnel Manual provides for separation by revoking the commissions of Coast Guard officers, who like the applicant have less than three years of commissioned service. On May 17, 19XX, the applicant's commission was revoked while he was in the three-year probationary status. The applicant could not have been confused about the basis of his discharge. In response to the special OER recommending the revocation of his commission, the applicant was given the opportunity to submit a statement with his comments. In that statement, he requested that "[his] commission be revoked under Article 12.A.11.," should it be decided that he be separated from the Coast Guard. The notification of proposed action informed the applicant that action had been initiated under Article 12.A.11. to revoke his commission for unacceptable conduct and extended an opportunity for him to submit comments to the panel. By letter dated February 11, 19XX, the applicant submitted his comments for panel consideration. Subsequently, he was notified that a Coast Guard panel recommended the revocation of his commission under Article 12.A.11., which was approved by the Commandant, and that he was being discharged in accordance with 14 U.S.C. § 281. The applicant has not proved that he was denied any due process by the Coast Guard. Accordingly, the Board finds that the applicant's commission was properly revoked under Article 12.A.11. of the Personnel Manual and 14 U.S.C. § 281.

4. Neither Article 12.A.11. of the Personnel Manual nor 14 U.S.C. § 281 authorizes severance pay for officers whose commissions are revoked. While Article 12.A.19.c. authorizes severance pay for officers discharged “for cause” under 12.A.15.c.1. and 14 U.S.C. §§ 321-327, the applicant does not fall into this category because he was not discharged pursuant to those authorities. Moreover, Article 12.A.15.c.4. specifically excludes officers like the applicant by indicating that they should normally be discharged under Article 12.A.11. of the Personnel Manual.

5. Article 10.F.1. of the Coast Guard Pay Manual provides that regular commissioned officers who are discharged from the Coast Guard may be paid severance pay under the provisions of 14 U.S.C. § 286 or 14 U.S.C. § 327. However, the applicant was discharged under the authority of 14 U.S.C. § 281. Therefore, no statutory authority exists to provide the applicant for his requested relief. The Board finds that the applicant has presented no law or regulation in support of his allegations, and has failed to show by a preponderance of the evidence that he is entitled to severance pay. *See Dock v. United States*, 46 F.3d 1083, 1086 (Fed. Cir. 1995) (stating that the “rights and benefits of a member of the military services, including pay and allowances, are defined by statute”).

6. The applicant alleged that the JNC SPD code is inappropriate because it is not applicable to commissioned officers whose commissions are revoked. The Coast Guard uses the DOD’s SPD codes, which are not tailored to Coast Guard regulations. The JNC code, denoting an involuntary discharge due to unacceptable conduct, is the code in the SPD Handbook that most accurately reflects the reason for the applicant’s separation. According to the SPD Handbook, commissioned officers may be assigned a JNC SPD code under authority found in Article 12.A.15. of the Personnel Manual. There is no SPD code for officers, like the applicant, whose commissions are revoked under Article 12.A.11. Moreover, as stated above, Article 12.A.15 refers to Article 12.A.11, as authorizing separation for commissioned officers with less than three years of commissioned service. Therefore, the Board finds that the applicant has failed to prove that the Coast Guard committed error or injustice by assigning him a JNC separation code, and Article 12.A.15. as the authority for his discharge on his DD 214. The DD Form 214 does not determine entitlement to severance pay, but rather “provides the member with a concise record of a period of service with the Armed Forces at the time of the member’s separation, discharge or change in military status.” Section 4.a. of COMDTINT M1900.4D (Certificate of Release or Discharge from Active Duty DD Form 214.).

7. Accordingly, the applicant’s request should be denied.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

The application of XXX XXXXXX X. XXXXXX, XXX XX XXXX, USCG, for the correction of his military record is denied.

